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In The

Supreme Court of the United States

October Term, 1996

M. BRUCE MEADOWS, SECRETARY
OF THE BOARD OF ELECTIONS,

Appellant,

v.

DONALD MOON, ET AL.,

Appellees.

On Appeal From The United States District Court
For The Eastern District Of Virginia

MOTION TO AFFIRM

WILLIAM S. HELFAND
J. PRESTON WROTENBERY
STEPHEN KATSURINIS
MAGENHEIM, BATEMAN,
ROBINSON, WROTENBERY AND
HELFAND, L.L.P.
700 East Main Street,
Suite 1603
Richmond, Virginia 23219
(804) 225-0500

PAUL LOY HURD*
1101 Royal Avenue
Monroe, Louisiana 71201
(318) 323-3838

DOUGLAS E. MARKHAM
333 Clay Street,
Suite 4510
Houston, Texas 77002
(713) 655-8700

Counsel for Appellees

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the District Court properly invoked strict scrutiny, having found that in creating the Third Congressional District of the Commonwealth of Virginia, racial considerations predominated in a manner that subordinated other traditional race-neutral districting principles?

2. Whether the District Court properly found that the Commonwealth of Virginia lacked a strong basis in evidence to believe that the failure to create the Third Congressional District would be violative of Section 2 of the Voting Rights Act?

3. Whether the District Court properly found that the racial construction of the Third Congressional District was not narrowly tailored to remedy Virginia's alleged Section 2 liability?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States District Court were:

1. Donald Moon, appellee herein.
2. Robert Smith, appellee herein.
3. M. Bruce Meadows, in his official capacity as Secretary of the State Board of Elections, appellant herein.
4. Curtis W. Harris, Defendant-Intervenor, appellant herein.
5. Jayne W. Barnard, Defendant-Intervenor, appellant herein.
6. Jean Patterson Boone, Defendant-Intervenor, appellant herein.
7. Raymond H. Boone, Defendant-Intervenor, appellant herein.
8. Willie J. Dell, Defendant-Intervenor, appellant herein.
9. Henry C. Garrard, Sr., Defendant-Intervenor, appellant herein.
10. Walter J. Kenney, Sr., Defendant-Intervenor, appellant herein.
11. Melvin R. Simpson, Defendant-Intervenor, appellant herein.
12. Gerald T. Zerkin, Defendant-Intervenor, appellant herein.

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MOTION TO AFFIRM

Pursuant to Rule 18.6, Appellees respectfully urge that the Court affirm the judgment below which invalidates that portion of Va. Code § 24.2-302, establishing the electoral boundaries of the Third Congressional District. A unanimous panel found that Virginia, in creating District 3, unconstitutionally segregated voters according to their race by "creating a bizarre shaped district for the predominant purpose of bringing within its boundaries a population that was in excess of 63% black." *Moon v. Meadows*, 952 F. Supp. 1141, 1148 (E.D. Va. 1997). The factual underpinnings of the lower court's holding are overwhelmingly supported by the evidence. In sum, the record and well-reasoned opinion below is consistent with recent jurisprudence enforcing the Equal Protection Clause of the 14th Amendment, and warrants summary affirmance under *Shaw v. Reno*, 509 U.S. 603 (1993) ("Shaw I"), *Miller v. Johnson*, 115 S. Ct. 2475 (1995), *Bush v. Vera*, 116 S. Ct. 1941 (1996), and *Shaw v. Hunt*, 116 S. Ct. 1894 (1996) ("Shaw II").

STATEMENT OF THE CASE

The district at issue here is another bizarrely shaped, non-compact, excessively racial minority district created after the 1990 decennial census. Plaintiffs are grass-roots political activists who reside in the district and have standing to challenge this district. *United States v. Hays*, 115 S. Ct. 2431 (1995).

A. Background of Appellees' Challenge to Virginia's Third Congressional District

Virginians have made great progress ensuring African-American voters and candidates fair access to the political process. This includes the historic statewide election of L. Douglas Wilder, an African-American candidate, and candidate of choice of black voters, in a state with an African-American population of less than 19% as Lieutenant Governor in 1985, and then, in 1989, as Governor.

Based upon elections in Southeast Virginia[1] (the area affected by District 3) for Congressional or statewide office, African-American candidates of choice, including both former Governor Wilder and Congressman Robert C. Scott, received substantial white cross-over votes. In both of Governor Wilder's statewide elections, he received sufficient white cross-over votes that, had the election been held only in the four circa 1980 congressional districts of Southeast Virginia (districts 1, 2, 3, and 4), Governor Wilder would have won the election. Plaintiffs' Trial Exhibit "P.E." 22, pp. 74-81. In more recent elections, the pattern of white support for African-American candidates of choice is even more pronounced, as is shown in the elections of Rep. Scott. He received 44.9% of the white vote in 1992 and 49.3% of the white vote in 1994, while sailing to a 79% victory district-wide. Congressman Scott received a greater percentage of the white vote in District 3, in each of his elections, than did certain

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[1] The challenged District 3 invades three historically distinct regions of Virginia: the Tidewater, Central Virginia, and Southside Virginia.

white candidates of choice of African-American voters including President Bill Clinton in 1992 and Senator Charles Robb in 1994. P.E. 22, p. 94.

This pattern of substantial white cross-over voting continues down the ballot to contests for local office, where candidates of choice of African-Americans are elected more often than they are defeated, with white cross-over reaching as high as 79.8% for an African-American Delegate seeking re-election in 1993[2]. P.E. 22, p. 104. Although, the record indicates that the Commonwealth undertook no effort to determine relative levels of racially polarized voting, Dr. Weber found that in 19 of 23 legislative contests in Southeastern Virginia, the candidate of choice of African-Americans was successful. P.E. 22, pp. 102, 104.

B. Development of Virginia's Redistricting Plan

Virginia's population increased 15.9% between the 1980 and 1990 Census. As a result of its comparative growth, Virginia was apportioned eleven Congressional Representatives, an increase of one over the previous decade. Population shifts around the state also required a new districting plan. The process of drawing new districts was undertaken by the General Assembly in the fall of 1991.

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[2] The court credited the testimony of Dr. Ronald E. Weber, who conducted a comprehensive bivariate ecological regression analysis to determine levels of white cross-over voting for African-American candidates of choice, and determined that more often than not candidates of choice of African-Americans win. P.E. 22, pp. 102, 104.

Virginia had already developed new districting plans for its House of Delegates and Senate by the time the Assembly gathered to adopt a new congressional plan. Early in the year, the General Assembly adopted the following hierarchy of factors to be considered in redistricting: (1) equal population, (2) voting rights act – minority voting rights, (3) contiguity, compactness, partisan fairness, and other permissible considerations. Joint Trial Exhibits "J.E." 1501 – 1503, Jurisdictional Statement (J.S.) 3, 12 – 13. The State now attempts to excuse its racial gerrymander because it was under pressure from African-American interest groups and that the position of the Department of Justice was well known. P.E. 28, J.E. 1075-1076.

In a special session in November, 1991, the legislature turned to congressional redistricting. The Assembly considered ten congressional plans, all of which included a district with an African-American total population of greater than 60%, and seven of which included an African-American total population in excess of 65%. *Moon*, at 1144, Jurisdictional Statement Appendix "J.S. App." 6.

In order to attain such high percentages of minority voters in all of the proposed plans, the drafters disregarded Virginia's historical respect for regions, and city and county boundaries. This racially myopic approach was a significant departure from traditional districting principles. Virginia had asserted, strongly and repeatedly, in response to past voting rights lawsuits, that it was unwilling to divide independent cities and counties to create districts, even to satisfy the constitutional principle of one-person, one-vote. *See Mann v. Davis*, 213 F. Supp. 577 (E.D. Va. 1962), *Howell v. Mahan*, 330 F. Supp. 1138

(E.D. Va. 1971), *Cosner v. Dalton*, 522 F. Supp. 350 (E.D. Va. 1981), *Cline v. Robb*, 548 F. Supp. 128 (E.D. Va. 1982). Virginia's 1991 congressional plan, however, divided 21 independent cities and counties with more than half of those splits occurring in the tortured Third District. Prior to 1965, Virginia had never split any city or county to create congressional districts, and in the congressional districts of the 1980s, only four counties and one independent city had been divided. P.E. 10. The current plan also divides precincts for the first time in Virginia's history. Where previously no precincts were split, in 1991, 54 precincts are divided between congressional districts, 37 of which were within the Third District. *Moon*, at 1148, J.S. App. 18. The splitting of cities and precincts was the means by which the Commonwealth gathered African-Americans into District 3 and excluded neighboring white voters, so that African-Americans would comprise a majority in excess of 60% of the population.

In the 1990s, Virginia used a new computer mapping application, the CAM/CAR system, to redistrict at the census block level – a level where the **only** accurate data available to the redistricters was racial characteristics and population. J.E. 2844-2848. Although the CAM/CAR system could accommodate other demographic data layers at the census block level, the legislature chose to depict only race. J.E. 1503, 2831-2835, 2864-2865, 2871-2872. Contrary to the assertion of Appellant (Jurisdictional Statement "J.S." 3), because all of the votes of a single precinct are counted together, without attributing the votes to individual census blocks, reliable political data was not available at the census block level, or below the precinct level at all. By the state's own choice, however, race was.

On November 20, 1991, the General Assembly adopted a districting plan in which the African-American population of District 3 was 61.48%. The Governor promptly rejected that plan and proposed amendments which increased the African-American population in District 3 to 63.98%. This plan was adopted by the legislature in December, 1991, and was precleared by the Department of Justice in February, 1992.

The Commonwealth expressly admitted in its 1991 § 5 submission that "the major reason for the changes in this region, other than to meet population standards, was the establishment of a district with black majority total (63.98%) and voting age (61.17%) populations." J.E. 20. Accordingly, the Commonwealth reported that only the doctrine of one-person, one-vote overrode racial considerations in the creation of District 3. J.S. 3.

The Commonwealth intentionally sought out pockets of African-American voters throughout Southeastern Virginia, as it noted in Attachment 4 of the 1991 § 5 submission:

> [N]ew district 3 was created from predominantly black portions of four of Virginia's present congressional districts: 1, 2, 3, and 4. . . . Moving black population into new district 3 unavoidably reduced the black total and voting age population in surrounding congressional districts.

J.E. 27. App. 13.

The trial court observed that the Commonwealth, in its own description of the district in its § 5 preclearance materials, "omitted any reference that the traditional race-neutral criteria such as compactness, contiguity,

adherence to political subdivision boundaries, or the preservation of interest were considered in the redistricting process." *Id.* at 1145, J.S. App. 11.

Subsequently, the Commonwealth enacted two sets of technical amendments to the plan, which were undertaken with one sacrosanct admonition insofar as it affected the 3rd Congressional District: no amendment would be permitted if it "reduce[d] the black percentage of total and voting age population in the majority black district (district 3)." J.E. 1637.

C. Description of District 3

District 3 contains the predominantly African-American neighborhoods of essentially every city which was split by the district. "Except for the City of Suffolk, every one of the cities split by this district results in the black population being concentrated in the portion placed in the Third District." *Moon*, at 1147, J.S. App. 16. While there are a few whole counties in the district, together they only account for approximately 10% of the total population. P.E. 9. The Court observed that

> Every one of the fingers which reaches from the whole-county hub of the district, into the divided cities, uses lightly populated territory, barren stretches of river, or other dubious connectors such as highway exits which appear to be leading the wrong way in an effort to reach the black populations which it excises from the various cities.

Id. at 1147, J.S. App. 16.

D. Judgment of the District Court

Plaintiffs' constitutional challenge to District 3 was filed on November 16, 1995.[3] The case was tried before a three-judge panel on September 11 – 12, 1996. The Court, after reviewing the voluminous record, concluded that, "The evidence, in our view is **overwhelming** that the creation of a safe black district predominated in the drawing of the boundaries of the Third Congressional District." *Id.* at 1145, J.S. App. 10 (emphasis added). The Court based its conclusion of the Commonwealth's predominant racial purpose on the "evidence of legislative intent, the bizarre shape of the district, and the subordination of traditional districting principles". *Id.* at 1146, J.S. App. 11.

The Court rejected Virginia's alternate arguments, including that the legislature's purpose was to protect senior congressional incumbents and to keep military installations in separate districts, recognizing instead that race was the criterion that could not be compromised, noting:

> the Legislature's general disregard for keeping regions and localities intact, and its abandonment of compactness illustrate that traditional principles were subordinated to the principal reason for the makeup of District 3. Thus, whenever a non-racial adjustment was made, an adjustment elsewhere was made on the basis of race to maintain the district's racial composition.

Id. at 1148, J.S. App. 17.

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[3] The District Court permitted the intervention of nine Defendant-Intervenors represented by the American Civil Liberties Union and the National Association for the Advancement of Colored People ("Harris Intervenors").

Applying strict scrutiny, the Court rejected the Commonwealth's assertion that the district was necessary to avoid § 2 liability. *Id.* at 1149, J.S. App. 20. Likewise, the Court rejected the Harris Intervenors' assertion that § 2 claims against scattered local governments, many of which were settled without admission of liability, justified the Commonwealth's enactment of District 3 as a constitutionally compelling remedial district. *Id.*, at 1149, J.S. App. 21.

Finally the Court, relying on the testimony of Dr. Weber, found that the "Defendants have failed to prove the third prong of *Gingles*, and the proof of the first is doubtful at best." *Ibid.*

Summarizing its holding, the Court found that "the Commonwealth has failed to prove that District 3 satisfies a compelling state interest or that it is narrowly tailored." *Moon*, at 1150, J.S. App. 24.

The Commonwealth's notice of appeal was filed March 7, 1997 and its Jurisdictional Statement was mailed on May 6, 1997. The Defendant-Intervenors filed their notice of appeal with the District Court on March 10, 1997, and then sought a 21-day extension of time for the filing of their Jurisdictional Statement. An extension, until May 30, 1997, was granted by the Supreme Court on May 2, 1997. This Court has jurisdiction under 28 U.S.C. § 1253.

GROUNDS FOR AFFIRMANCE

The Commonwealth's own admissions, as well as other direct and circumstantial evidence adduced at trial, established that racial considerations predominated in the construction of District 3. Indeed, the State's own Jurisdictional Statement admits the racial motivation. J.S. 15. Defendant failed to meet its burden to prove that the racial construction of District 3 was necessary to avoid liability under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, *et seq.*, or was appropriately narrowly tailored to achieve a compelling state interest.

This case presents no novel or substantial issues. Based upon the overwhelming record before the District Court, this Court should affirm the judgment of the unanimous District Court. *See, Louisiana v. Hays*, 116 S. Ct. 2542 (1996) (summarily affirming a unanimous District Court panel that Louisiana District 4 was an unconstitutional racial gerrymander).

I. THE STATE ADMITTED, AND THE EVIDENCE ESTABLISHED THAT RACE PREDOMINATED IN THE CONSTRUCTION OF DISTRICT 3.

A. The Clearly Erroneous Standard of Rule 52(a) Is The Applicable Standard Of Appellate Review.

In evaluating voting rights cases involving an alleged racial gerrymander, the District Court must conduct a two stage, burden-shifting, analysis. First it must determine whether the Plaintiffs have proven that racial considerations predominated over other traditional, race-neutral districting principles. If the Court so finds, the

burden shifts to the defendant to prove that the racial decision-making was narrowly tailored to achieve a compelling governmental interest. *Vera v. Richards*, 861 F. Supp. 1304, 1336-1337 (S.D. Tex. 1994).

This Court reviews the findings of a District Court's application of both tests under the clearly erroneous standard. *See Miller*, 115 S. Ct. at 2488 (upholding a District Court's finding of racial gerrymandering as not clearly erroneous). *See also Rogers v. Lodge*, 458 U.S. 613, 622-627 (1982), (reviewing findings of whether an electoral system was maintained for discriminatory purpose is reviewable under clearly erroneous standard), *City of Rome v. United States*, 446 U.S. 156, 183 (1980) (finding whether an electoral system had a discriminatory effect reviewed under the clearly erroneous standard); and, *Voinovich v. Quilter*, 507 U.S. 146, 159 (1993) (findings of discriminatory intent reviewable under the clearly erroneous standard.) Virginia improperly attempts to recast the comparable findings of the Court below as questions of law. J.S. 18, note 6. This unsupported suggestion contradicts Rule 52(a), Fed. R. Civ. P. and this Court's prior jurisprudence.

The application of the clearly erroneous standard relies on the District Court's knowledge of the local political, economic and social conditions which provides this Court with an intimate understanding afforded by a local perspective of the voting practice under review. *Thornburg v. Gingles*, 478 U.S. 30, 79-80 (1986). The application of this standard of review gives proper deference to the District Court's "intensely local appraisal of the design and impact of the contested electoral mechanisms" which

"preserves the benefit of the trial court's particular familiarity with the indigenous political reality. . . . " *Gingles*, 478 U.S. at 80.

In the face of this clearly established rule of appellate review, Virginia mistakenly asserts that the District Court's factual findings are subject to *de novo* review, due to what the state asserts is a "misapprehension of the proper analysis to be applied to the evidence." J.S. 18, note 6. Appellant's suggestion that the District Court "misapprehended" its legal responsibilities is an obvious attempt to avoid the application of the clearly erroneous standard of review.

B. The District Court's Finding That Racial Considerations Predominated is Well-Supported by Both Direct and Circumstantial Evidence.

"A racially gerrymandered districting scheme, like all laws that classify citizens on the basis of race, is constitutionally suspect." *Shaw v. Hunt*, 116 S. Ct. at 1900. *See also Miller* at 115 S. Ct. at 2482-3; *Shaw I*, 509 U.S. at 657-8, and *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). In *Miller*, this Court articulated:

> [t]he plaintiff's burden is to show, whether through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.

Miller, 115 S. Ct. at 2491.

This Court held that the Plaintiff "must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or community defined by actual shared interests, to racial considerations." *Miller*, 115 S. Ct. at 2488. When the Plaintiff's evidence is cumulatively sufficient to prove by a preponderance of the evidence that racial considerations predominated, the District Court properly finds that the districting scheme is a "racial gerrymander." Such a districting scheme "cannot be upheld unless it satisfies strict scrutiny, our most rigorous and exacting standard of constitutional review". *Miller*, 115 S. Ct. at 2490.

At this point, the evidentiary burden shifts to the Defendants and "[t]o satisfy strict scrutiny, the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Ibid.*

The plaintiffs carried their burden of showing that racial considerations predominated in the adoption of District 3. The District Court received substantial direct evidence of Virginia's racial motive in its intention to create District 3 to achieve an "effective" majority-minority district. J.E. 564. These include official declarations – admissions – contained in the § 5 submission; transcripts of public hearings, J.E. 84-979; transcripts of legislative debate, J.E. 980-1342; and contemporaneous newspaper articles J.E. 1343-1497.

The district was initially constructed by the legislature, was modified by recommendation of the Governor, and thereafter amended twice again, each time becoming

progressively more and more racially pure. Each change served the oft-stated racial purpose.

Virginia acknowledges, as they must, that "the state intended to create a majority-minority district" as reiterated in the Jurisdictional Statement filed with this Court (J.S. p.15).

The Court found that the State moved beyond race-conscious districting and subordinated traditional districting principles. The three-judge Court evaluated circumstantial evidence including maps showing contorted boundaries, P.E. 1, 3A-3FF, App. 1; population density, and the racial division of localities, P.E. 2A-2G, 7-9; proof of numerous split cities and counties, P.E. 10, App. 20; the meandering of District 3 across distinct regions, including Tidewater, Southside and Central Virginia, P.E. 1, App. 1; the hyper-technical contiguity based upon the connection of dispersed minority populations by using unpopulated connectors such as rivers and highway exit ramps; altering the historic structure of districts D.E. 30A, 30B, 30C, 30D; and the general bizarreness of District 3.

The Court below properly applied this Court's decision in *Arlington Heights* conducting a "sensitive inquiry into such circumstantial and direct evidence as may be available." *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977).

In *Arlington Heights*, this Court noted that an appropriate evidentiary inquiry is whether "a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action" (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) and *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)).

With this record the District Court correctly determined that "[e]vidence of legislative intent, the bizarre shape of the district, and the subordination of traditional districting principles" established the predominant racial motive. *Moon*, at 1146, J.S. App. 11.

C. Appellant's *Post Hoc* Rationalizations are Unsupported by the Evidence.

The Appellant presented anecdotal evidence that concerns other than race were also addressed while creating District 3. The Appellant asserts these interests include: (a) the allocation of military facilities among the congressional delegation, (b) protection of incumbents; and (c) the creation of a new congressional district in Northern Virginia. These issues were first offered with the underlying suit as an alternate explanation for the divisions of the localities, and the contorted expanse of District 3. None are supported by the evidence as truly important constraints at the time the district was created.

1. Allocation of Military Facilities.

The Appellant suggests that the district's bizarre shape was influenced by the State's wish to spread military facilities among various congressional districts. The Commonwealth achieved the same policy objective in the 1980s with no disruption to the boundaries of independent cities and counties. D.E. 1625. The maps offered by Defendant at trial indicate that, in every case, the alleged attempt to allocate military facilities involved nearby neighborhood splits that can only be described as racial.

A review of D.E. 37[4] shows that the sharp, contorted division of Norfolk is not in the same area of town as the naval facility. The state proposed no explanation for splitting a neighborhood by race in order to move a facility from one district to another.

2. Protection of Incumbents.

The Appellant suggests that the odd shape of the district, and correlation of racial division, was an intentional effort to "preserve the incumbencies of the senior members of Virginia's Congressional delegation" (J.S. 14), namely Rep. Herb Bateman, Rep. Owen Pickett and Rep. Norman Sisisky. J.S. 14, note 5. Senator Gartlan claimed a "partisan objective of maintaining the current Democratic majority in the Congress of the United States. . . . " J.S. 6. Even partisan objectives may not be accomplished by use of race as a proxy. *Vera,* 116 S. Ct. at 1972.

3. Creation of a New District In Northern Virginia.

Lastly, the State suggests that the creation of a new congressional district in Northern Virginia, the area of highest population growth, is somehow relevant to the racial division of the Tidewater region and Central Virginia. The obvious geographic expanse that separates

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[4] The mylar overlay for this exhibit depicts the Legislative Conferees' plan of 11/20/91. The 1993 adjustments, depicting the current plan, is located at D.E. 39 and D.E. 40.

Northern Virginia's population and the Tidewater population supports the District Court's rejection of this obviously *post hoc* rationalization.

While the state may have achieved some of their districting objectives identified *post hoc*, none are sufficient to overcome the Court's holding that race predominated. It can be fairly said that these objectives were ancillary or incidental to the overriding purpose of racial gerrymandering. The evidence presented to the District Court clearly established that "[r]ace was the criterion that, in the State's view, could not be compromised; respecting communities of interest and protecting Democrat incumbents came into play only after the race-based decision had been made." *Moon* at 1148 citing *Shaw v. Hunt*, 116 S. Ct. at 1901. Notwithstanding such arguments, which appear to have been created for the trial of this matter, the State could not show the trial court any evidentiary support for such claims.

II. VIRGINIA'S *POST HOC* ASSUMPTION OF SECTION 2 LIABILITY CANNOT EXCUSE DISTRICT 3

A. Standard of Review

In *Shaw II*, the clearly erroneous appellate review standard was applied to a court's findings with respect to a state's asserted compelling interest and to the issue of narrow tailoring. *See Gingles*, 478 U.S. at 80 (findings of voting dilution under Section 2 reviewable under the clearly erroneous standard).

In an attempt to avoid the application of the appropriate standard of review, the Appellant states that the

Court "misapprehended" the law in two distinct analyses under Section 2 and *Gingles*. J.S. 18. The Appellant alleges first, that the Court improperly required proof that Section 2 liability actually exists, instead of accepting as sufficient proof that the State had a strong basis in evidence of Section 2 liability; and second, that the Court applied an improper, federal standard of compactness.

As to the first alleged misapprehension, the application of the less demanding standard proffered by the State would lead to no different result in this case. Based upon the District Court's factual finding that the existence of the first prong of *Gingles* is "doubtful at best", (*Moon*, at 1149, J.S. App. 21) the Appellant cannot identify in the record sufficient evidence to meet even its own self-imposed, less demanding standard. There cannot be a strong basis in evidence of anything, that is "doubtful at best".

As to the second alleged improper legal conclusion, the Appellant is simply incorrect. The Court properly applied the requirements articulated in *Gingles* concerning compactness and simply disagreed with Appellant[5]. The Appellant asserts that District 3 meets the compactness requirements of § 2 because under Virginia law, the state has a less stringent standard for "compactness" and District 3 allegedly conforms to this looser standard. J.S. 13. The District Court properly rejected this assertion. To

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[5] The Appellant's suggestion of "no serious dispute that Virginia proved the existence of the first two prongs of the *Gingles* analysis" is a misrepresentation, that ignores the pleadings, the trial, and the contrary findings of the District Court, as to the first precondition.

accept the State's assertion is to resurrect the legal concept that State law preempts federal law. This argument has previously been rejected by this Court in an analogous situation. *Arlington Heights*, 97 S. Ct. at 562, n. 8. Lawful congressional districting must meet the requirements of both federal and state law.

The Court properly evaluated the evidence, and made its factual determination based upon a comprehensive record. The District Court held it "doubtful at best" that a compact majority-minority district D.E. 22A, 22E, 22H, 22L had been presented to the Court. Regardless of the Appellant's contention, the District Court's finding is reviewable by this Court under the clearly-erroneous standard and should be affirmed.

B. There Was No Strong Basis In Evidence That Section 2 Liability Existed.

Appellant asserts that § 2 of the Voting Rights Act requires the creation of District 3. The Appellant offered no other compelling government interest to support the racial creation of District 3.[6] J.S. App. 21-22.

When a state chooses to create a majority black district to avoid probable § 2 liability, the state must use a racially restrained, measured construction to prospectively remedy the Section 2 liability. To voluntarily implement racial policies, a governmental entity must have a "strong basis in evidence for its conclusion that remedial

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[6] Appellant makes no suggestion that § 5 of the Voting Rights Act requires the creation of District 3.

action was necessary." *Wygant v. Jackson Board of Education*, 476 U.S. 267, 277 (1986); *see also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

For District 3 to be a constitutional, narrowly tailored, § 2 remedial district, the Appellant must have made proper findings that establish the existence of the three *Gingles* preconditions[7], and that under the "totality of the circumstances," members of a protected class "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 42 U.S.C. § 1973(b). *See Shaw v. Hunt*, 116 S. Ct. at 1905. The Commonwealth was required at the time of each enactment in 1991, 1992 and 1993 to have a strong basis in evidence for

> [p]roper findings in this regard are necessary to define both the scope of the injury and the extent of the remedy necessary to cure its effect. . . . Absent such findings, there is a danger that a racial classification is merely the product of unthinking stereotypes or a form of racial politics.

Croson, 488 U.S. at 510.

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[7] The first *Gingles* precondition requires proof that the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"; the second precondition requires proof that the local minority group votes in a "politically cohesive" manner; and third, the Plaintiff must prove that "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 50-51.

Dr. Weber's testimony showed the absence of credible evidence of legally significant white bloc voting. App. 21-22. Even the State's expert, Dr. Lisa Handley who analyzed 15 black-white legislative elections, determined that black candidates won nine. Dr. Steven Cole, a statistician offered as an expert by the Defendant-Intervenors analyzed 11 legislative elections in which blacks won nine. P.E. 31.

After a comprehensive review of the evidence, the unanimous finding of the District Court was that the facts necessary to preserve District 3 simply do not exist. The Court held that one of the *Gingles* preconditions, white bloc voting sufficient to usually defeat the candidate of choice of African-American voters, does not exist at all,[8] and that another *Gingles* pre-condition, the existence of a sufficiently numerous and compact minority population was "doubtful at best". *Moon*, at 1149, J.S. App. 21.

Indeed, maps show the dispersion of minority population into three distinct areas: Norfolk/Portsmouth, Newport News/Hampton, and Metropolitan Richmond. P.E. 17K, 17L, 17M, 17N, App. 5.

The absence of a strong basis in evidence is well supported on the record, is founded in the unique local knowledge of the three-judge District Court of the electoral realities of Virginia, and is properly affirmed by this Court.

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[8] The State offers new evidence that was not presented to the District Court in Tables 1 and 2 of the Appendix to the Jurisdictional Statement. The tables are unreliable and contain only a few selected contests. For a more detailed reprise of the extent of the reports of Drs. Handley and Cole see P.E. 31.

C. District 3 Is Not Narrowly Tailored To Meet an Alleged Section 2 Liability.

Assuming *arguendo* that compliance with Section 2 is a compelling governmental interest[9], the District Court's judgment in the instant case must nevertheless be sustained and this Motion To Affirm granted as the district is not narrowly tailored for the three reasons below.

1. District 3 Does Not Substantially Address a Real § 2 Claim.

Defendant-Intervenors assert that a "litany of litigation somehow establishes a broader Section 2 claim" beyond the local area of applicability. J.S. App. 21. The District Court recognized the wholly inconclusive nature of compromise consent agreements in a political context. *See also Croson*, 488 U.S. at 505 (The Court has "never approved the extrapolation of discrimination in one jurisdiction from the experience of another.") The propriety of the Court's disregard of these settlement agreements was confirmed by the pre-trial agreement to dismiss Section 2 claims against the City of Hampton, *Simpson v. City of Hampton*, No. 95-CV-0083 (E.D. Va. dismissed Nov. 15, 1996). One of the Plaintiffs in the City of Hampton case is Mr. Melvin Simpson who is a Defendant-Intervenor in this case.

An analysis conducted by Dr. Harold Stanley, the expert retained by the City of Hampton, in the dismissed case, bolsters the District Court's finding that dominating

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[9] *See Vera*, 116 S. Ct. at 1968 (O'CONNOR, J. concurring).

white bloc voting does not exist in the City of Hampton, one jurisdiction which was racially divided by District 3. P.E. 20.

District 3, like North Carolina's District 12, is located in a different location than the area in which the Section 2 liability arises. "The vote dilution injuries suffered by these persons are not remedied by creating a safe majority-black district somewhere else in the State." *Shaw II*, 116 S. Ct. at 1906. *See also Croson*, 488 U.S. at 507, (remedy "not linked to identifiable discrimination").

In this case, the District Court specifically noted that "[o]nly 5 of the 13 contested localities are partially, and none are wholly, in the Third district." J.S. App. 21. Thus, District 3 does not directly address the harm asserted, and can not reasonably be argued to be narrowly tailored to remedy the Section 2 liability asserted by the State in an attempt to avoid liability in this case.

2. Electorally, District 3 Is an Overly Safe District for Candidates of Choice of Black Voters.

The construction of District 3 relies upon the racial division of eleven of its seventeen jurisdictions to produce a minority population of 64% with a minority voting age population of 61%. *Moon*, at 1146, J.S. App. 14. No justification for a percentage so high appears anywhere within the record. Without analyzing the existing levels of voter turnout and white cross-over voting, the Commonwealth blindly constructed a district that was overly safe for any candidate preferred by black voters.

The excessiveness of the 64% level is revealed by the overwhelming victories of Governor Wilder, Rep. Scott and Rev. Jesse Jackson in the 1988 Democrat Primary. P.E. 22 at 80, 98, 106-107. Examining Rep. Scott's unsuccessful 1986 campaign for Congress in District 1, Dr. Weber indicated that based upon the white cross-over actually cast for Rep. Scott, he would have defeated the incumbent had the district included only a 40% black voting age population. P.E. 12. At the time the districts were drawn, the CAM/CAR system informed the legislature that reconstituted election returns showed that L. Douglas Wilder had won 76.6% of the vote in 1985 within the confines of the current District 3, and that he had received 76.0% in his 1989 contest. P.E. 22 at 107.

The continued success of black congressional candidates in Texas, Georgia, Florida, Indiana, and California in less racially pure districts confirms the excessiveness of the racial division of the population in Virginia. *See*, Cameron, Epstein and O'Halloran, *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?*, Am. Poli. Sci. Review 90, Dec. 1996, 794-812, wherein the authors estimate that in the South, any district that exceeds 40.3% African-American population is likely to elect a candidate of choice of black voters.

3. District 3 Disrupts Non-Racial Bases of Political Identity.

"Reapportionment is one area in which appearances do matter." *Shaw I*, 509 U.S. at 646. "District shape is not irrelevant to the narrow tailoring inquiry" because the racial dismantling of localities "cause constitutional harm

in so far as they convey the message that political identity is, or should be, predominately racial" *Vera*, 116 S. Ct. at 1962 and that the unnecessary division of existing political sub-division "disrupts non-racial bases of political identity." *Ibid.*

III. CONCLUSION

The Commonwealth set out to create a 60-65% black majority congressional district in 1991 by disregarding its long-standing traditions. The District Court correctly examined the admissions of the State, the direct and circumstantial evidence, and applied strict scrutiny in a manner consistent with this Court's jurisprudence. Plenary review is unnecessary.

Respectfully submitted,

WILLIAM S. HELFAND
J. PRESTON WROTENBERY
STEPHEN KATSURINIS
MAGENHEIM, BATEMAN,
ROBINSON, WROTENBERY AND
HELFAND, L.L.P.
700 East Main Street,
Suite 1603
Richmond, Virginia 23219
(804) 225-0500

PAUL LOY HURD*
1101 Royal Avenue
Monroe, Louisiana 71201
(318) 323-3838

DOUGLAS E. MARKHAM
333 Clay Street,
Suite 4510
Houston, Texas 77002
(713) 655-8700

Counsel for Appellees

**Counsel of Record*

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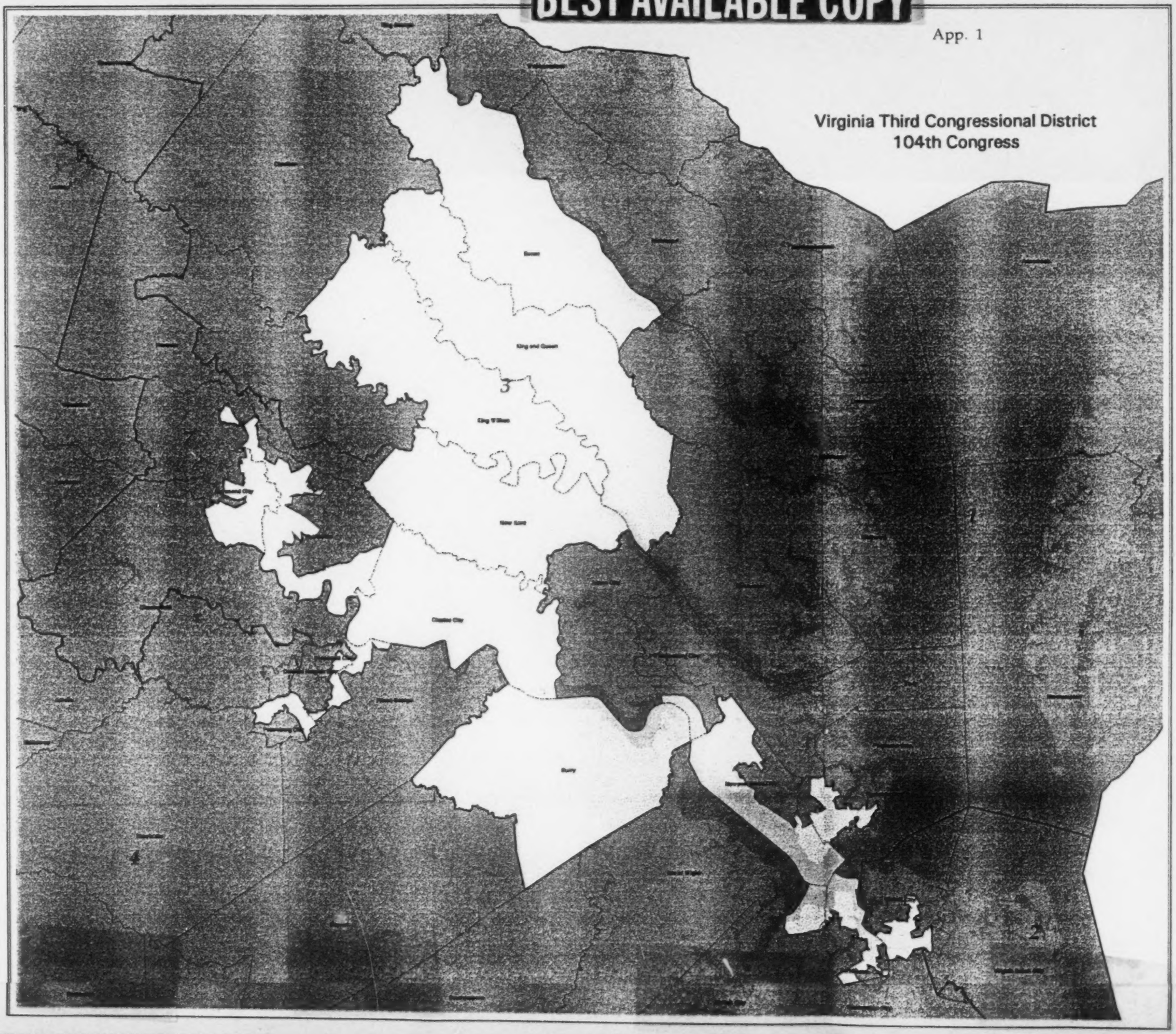


App. 2

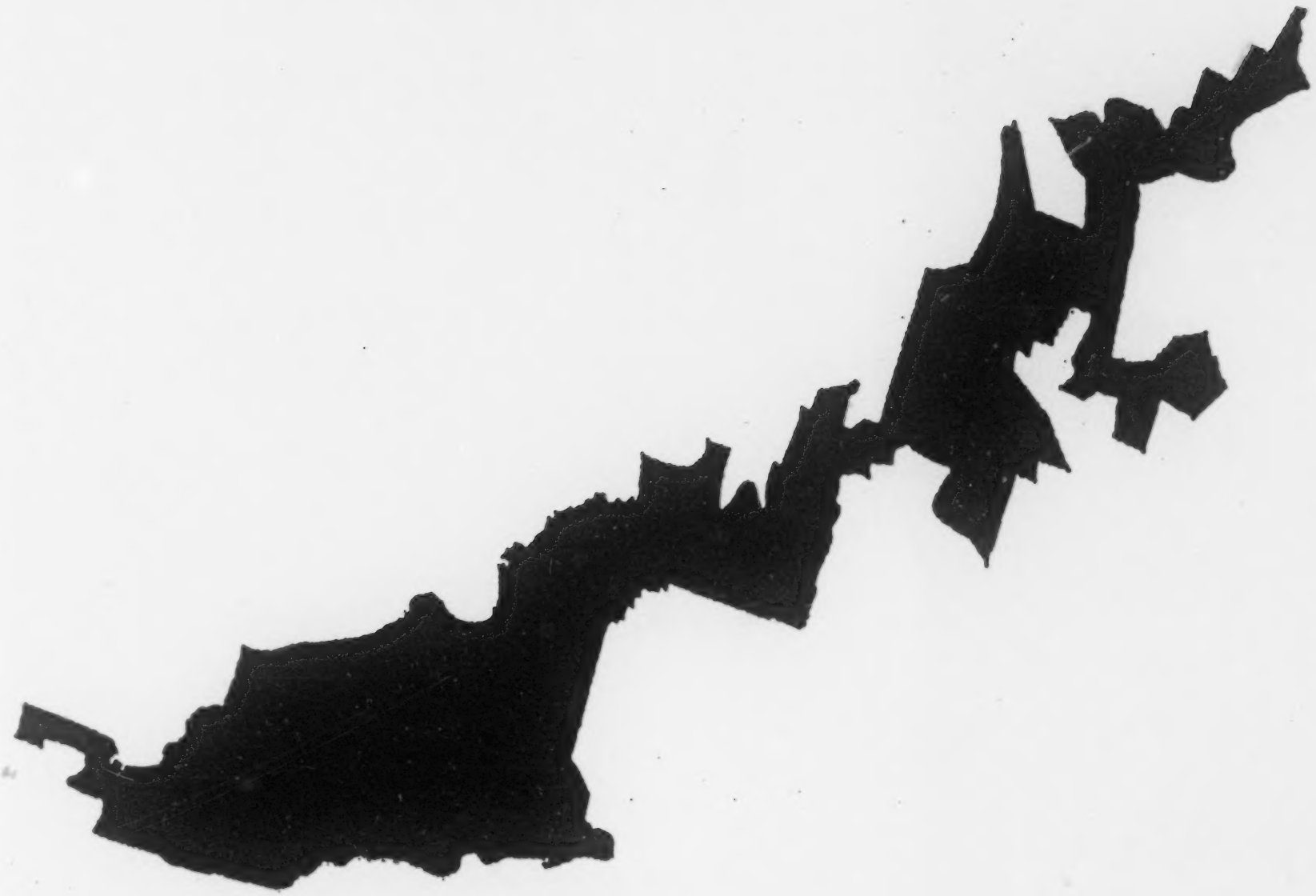
VIRGINIA CONGRESSIONAL DISTRICT 3

App. 3

GEORGIA CONGRESSIONAL DISTRICT 11

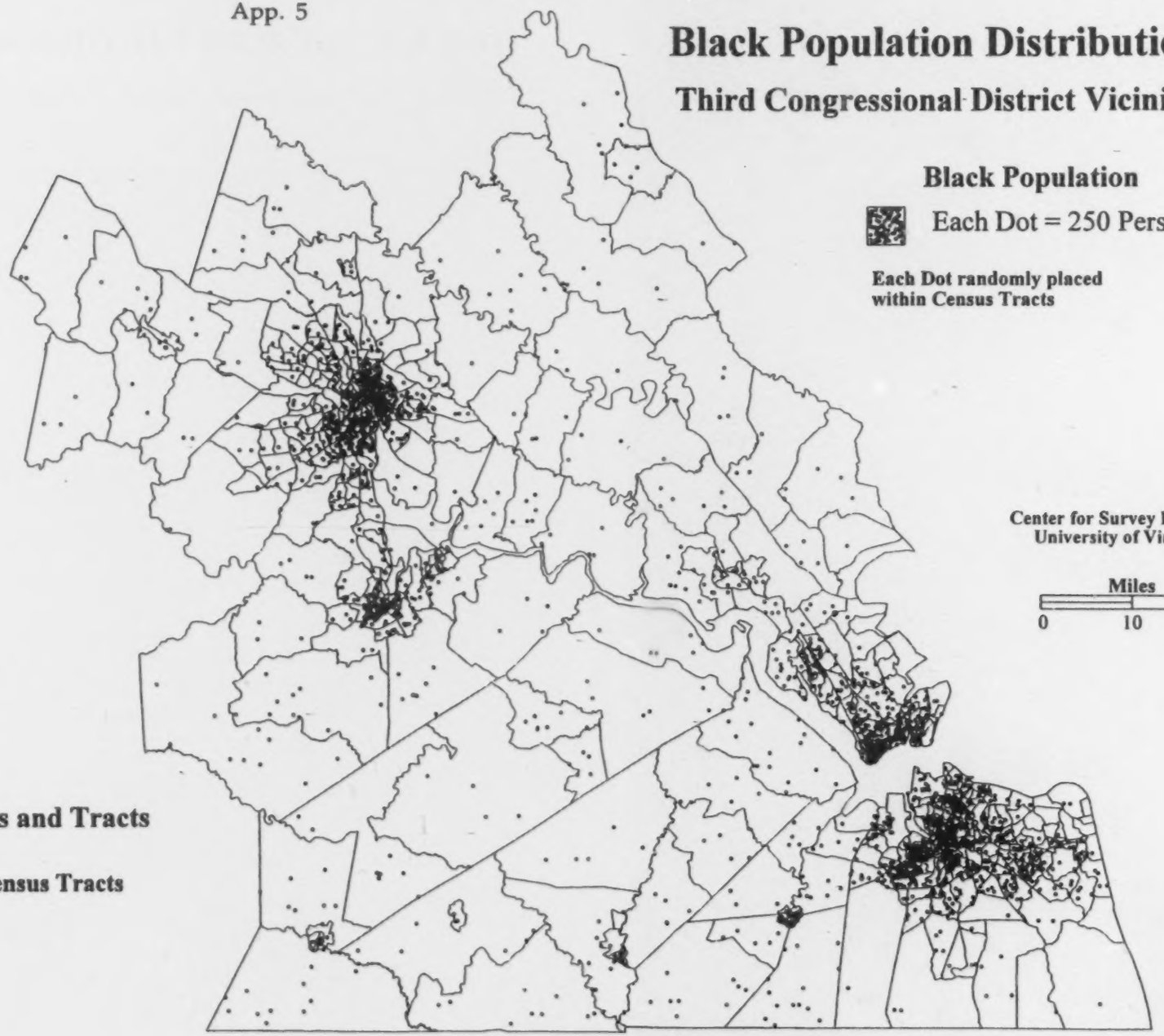
App. 4

LOUISIANA CONGRESSIONAL DISTRICT 4



Black Population Distribution

Third Congressional District Vicinity



Sources: Population from U.S. Census Bureau 1990 STF3a CDROM. Tract and Political Boundaries from U.S. Census Bureau TIGER Files CDROM 1992.

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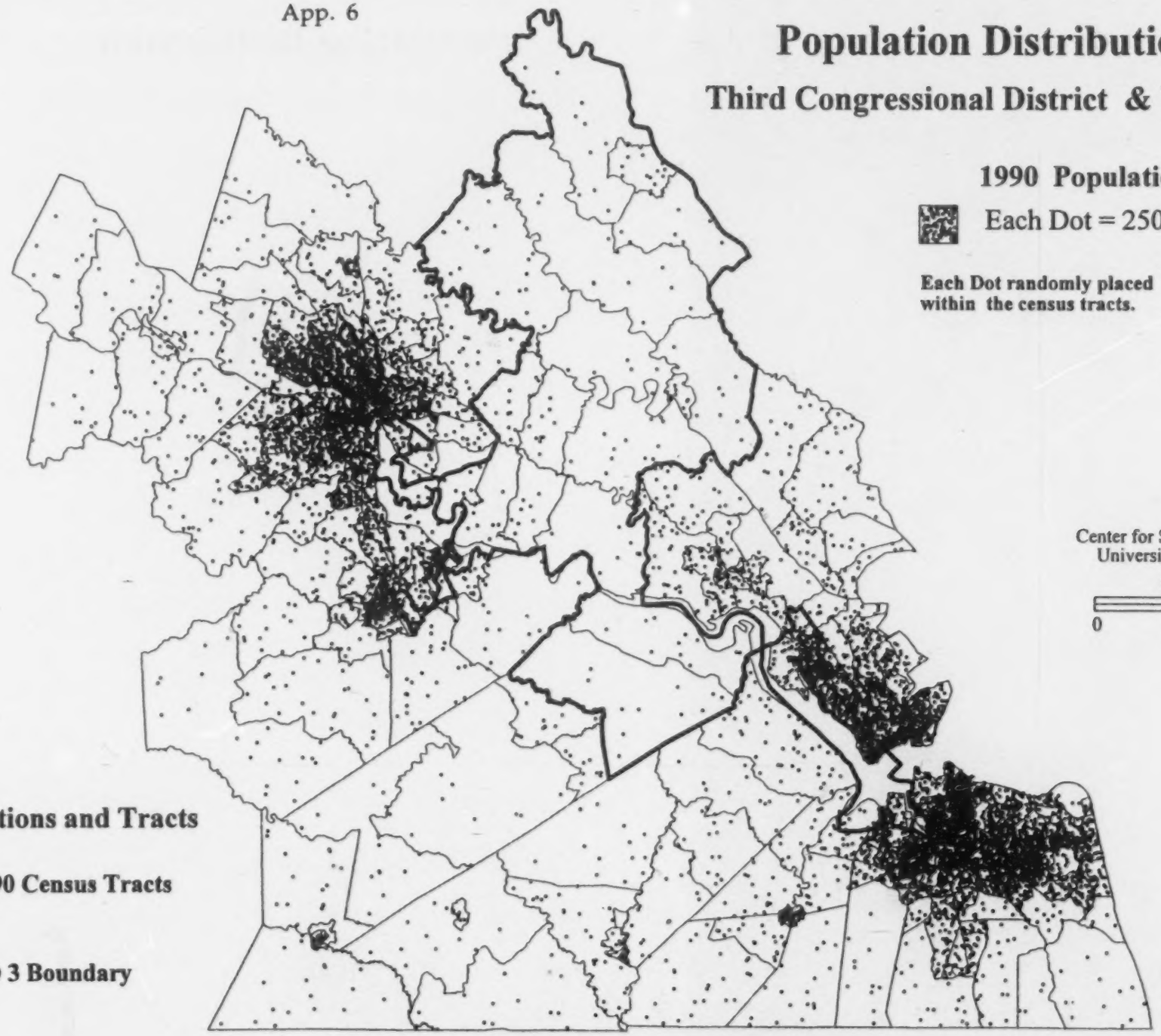
Population Distribution

Third Congressional District & Vicinity



1990 Population

Each Dot = 250 Person

Each Dot randomly placed within the census tracts.

Center for Survey Research
University of Virginia

Miles

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Jurisdictions and Tracts

1990 Census Tracts

CD 3 Boundary

Sources: Population from U.S. Census Bureau
1990 STF3a CDROM. Tract and Political Boundaries
from U.S. Census Bureau TIGER Files CDROM 1992.

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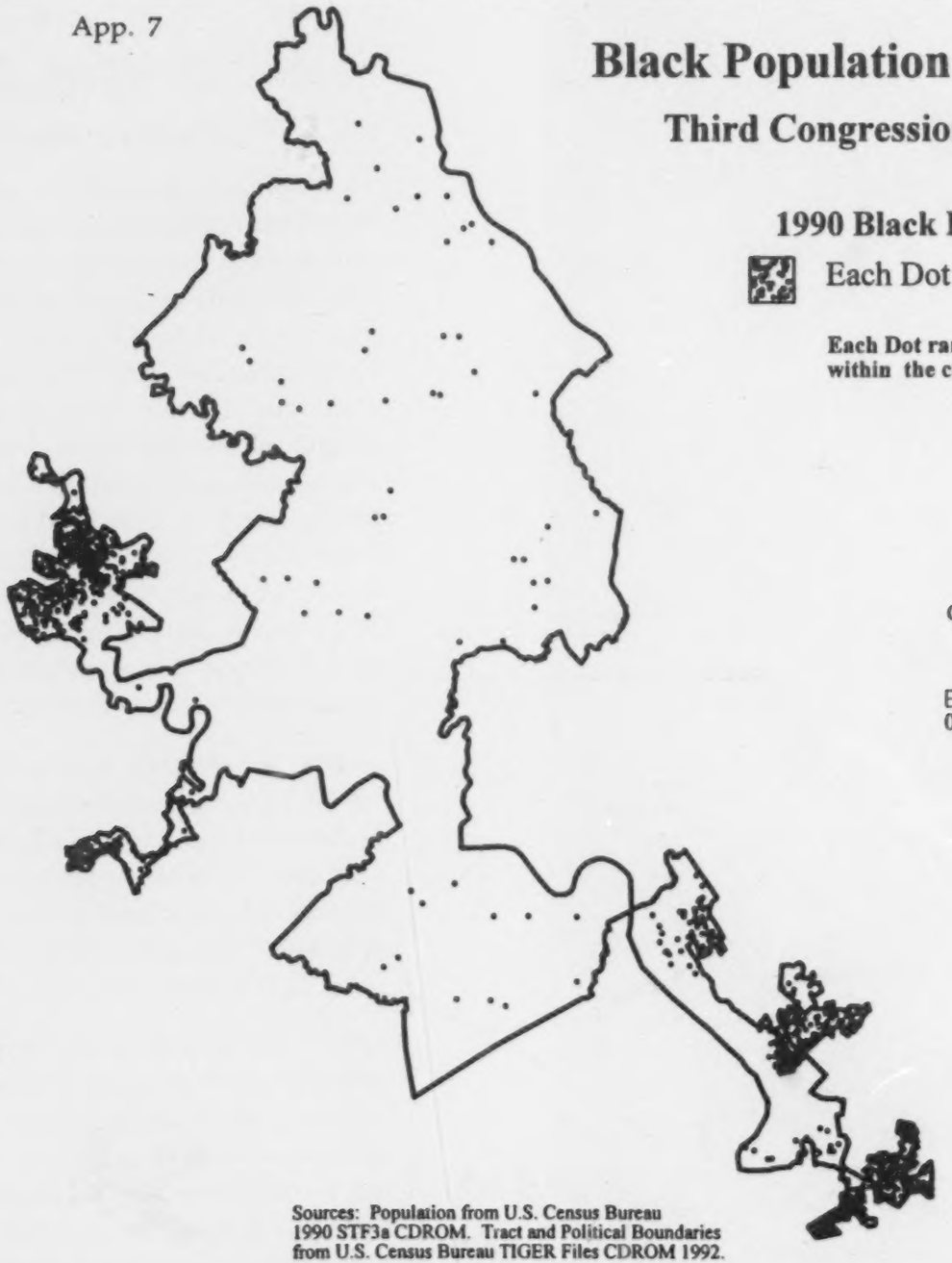
Black Population Distribution

Third Congressional District



1990 Black Population

Each Dot = 250 Person

Each Dot randomly placed within the census tracts.

Center for Survey Research
University of Virbinia

Miles

0 10 20

Jurisdictions and Tracts

Tracts (Partial) in CD 3

CD 3 Boundary

Sources: Population from U.S. Census Bureau 1990 STF3a CDROM. Tract and Political Boundaries from U.S. Census Bureau TIGER Files CDROM 1992.

PLAINTIFF'S EXHIBIT 170 3:95CV942

ATTACHMENT 3

STATEMENT OF THE CHANGE

Because the population of Virginia increased by nearly 16 percent since the last congressional redistricting, an additional, eleventh, congressional district was apportioned to the Commonwealth following the 1990 census. Between 1980 and 1990, Virginia's population increased from 5,346,818 to 6,187,358, an increase of 840,540 and a growth rate of 15.72 percent. Virginia's three major metropolitan areas accounted for the largest population growth: Northern Virginia 42.9 percent of the total growth, Newport News-Norfolk 27.2 percent, and Richmond 12.8 percent. Localities adjacent to these three metropolitan centers also experienced rapid growth. The growth was uneven, however, with the rural western and southside areas of the state either losing population or growing at a rate much slower than the rest of the state.

Virginia's eleven congressional districts are apportioned by Chapter 6, 1991 Va. Acts (Spec. Sess. II) ("Chapter 6"). The eleven districts include an open district (a district with no resident incumbent member of Congress) with majority black total and voting age populations, designated District 3, and an additional, new open district in Northern Virginia, designated District 11.

The addition of an eleventh congressional district caused the ideal population for a congressional district to remain relatively constant and minimized the potential changes in the areas of low growth. Extensive redrawing of district lines was necessitated in the remainder of the Commonwealth, however, to meet ideal population standards, establish a majority black district, and create a new

open district in the Northern Virginia area of highest population growth.

Western and Southside Virginia

This area covers present Districts 5, 6, and 9. These 3 districts were 66,050 below the ideal population level according to the 1990 census. District 9 contained the largest population shortfall (38,684) for an ideal district. Located in the far western corner of Virginia, new District 9 extended its eastern boundary into present District 5 (Carroll County) and present District 6 (portions of Roanoke County) to gain the necessary population. New District 6 in turn, added portions of Bedford County and the City of Lynchburg from present District 5 to reunite Lynchburg in District 6. A small portion of Rockingham County was moved from new District 6 to balance the district's total population.

The shift of the City of Charlottesville and nearly one-half of Albemarle County from present District 7 to new District 5 compensated District 5 for its population shifts to new District 6. As a result, meeting population equality requirements in the western region impinged on the rest of the Commonwealth only in the City of Charlottesville-Albemarle County area of present District 7.

Hampton Roads, Central and Eastern Virginia

This area includes present Districts 1, 2, 3, and 4. Each of the present congressional districts exceeded the ideal population, and the total excess population for the

region was 219,689. Changes made by Chapter 6 also involve portions of present District 7.

A major reason for changes in this region, other than to meet population standards, was the establishment of a district with black majority total (63.98 percent) and voting age (61.17 percent) populations. This new congressional district, designated District 3, draws black population concentrations from each of the four present districts and is described in detail in Attachment 4. The portions of new District 3 contributed by each of the present congressional districts are as follows:

District 1	36.1 percent
District 2	14.6 percent
District 3	35.4 percent
District 4	13.9 percent

No incumbent member of Congress resides in new District 3.

The dominant share of the population of present District 3, a total of 404,842, now is contained in new District 7. The remaining localities in new District 7 are drawn from present District 7. The incumbent Congressmen from present Districts 3 and 7 both reside in new District 7.

Present District 1 also is significantly affected by creating the black majority district. To restore population equality for District 1, portions of present District 7 (part of Hanover, Spotsylvania and Stafford Counties, and portions of the City of Fredericksburg) and present District 8 (portions of Stafford County) shift to new District 1.

New District 4 is compensated for its shift of population to new District 3 by adding population from present District 7 (Goochland and Louisa Counties), present District 3 (portions of Chesterfield County), and present District 2 (portions of the City of Virginia Beach). Predominantly black precincts in Norfolk were shifted from present District 2 to new District 3 without any necessary population adjustments for District 2.

Northern Virginia

This area includes present Districts 7, 8, and 10. (While only part of present District 7 actually is situated in the Northern Virginia metropolitan area, that district is directly involved in the changes affecting the Washington, D.C. suburbs.) The combined population for this fast growing area exceeded the ideal for three districts by 408,849.

The most notable change in this area is the creation of a new open congressional district, designated District 11, from portions of present Districts 8 and 10. District 11 includes approximately one-half the population of Fairfax County, all of the City of Fairfax, and most of eastern Prince William County.

District 8, in turn, is redrawn to become an "inner" Northern Virginia district situated east of new District 11. Arlington County, the City of Falls Church, and the McLean area of Fairfax County shift from present District 10 to join Alexandria and eastern and southeast Fairfax County in new District 8.

New District 10 becomes the Northern Virginia "outer" district, with over 60 percent of its population drawn from northern and western Fairfax County, western Prince William County and the two small cities it surrounds (Manassas and Manassas Park), and Loudoun County. The balance of the new District 10 is comprised of localities to the west, in the Northern Piedmont and Lower Shenandoah Valley, all of which were in present District 7.

Finally, new District 7 is composed predominantly of population (404,842) from present District 3. New District 7 includes 157,660 people drawn from Central Virginia localities which were in present District 7. The balance of present District 7 is dispersed to new Districts 1, 4, and 5 as described previously.

A list of equivalent old and new districts, showing the names of incumbent members of congress, is attached.

ATTACHMENT 4

STATEMENT OF ANTICIPATED MINORITY IMPACT

Virginia's first congressional district with a majority black total and voting age population was created by Chapter 6, 1991 Va. Acts (Spec. Sess. II). New District 3 contains a total black population of 63.98 percent and a black voting age population of 61.17 percent, percentages which the General Assembly felt ensured that black voters in the Commonwealth will be able to elect candidates of their choice. No incumbent member of Congress resides in new District 3.

As described in Attachment 3, new District 3 was created from predominantly black portions of four of Virginia's present congressional districts: Districts 1, 2, 3, and 4. The share of new District 3 drawn from each of these present districts is as follows:

District 1	36.1 percent
District 2	14.6 percent
District 3	35.4 percent
District 4	13.9 percent

An attached chart gives a more detailed description of new District 3.

Moving black population into new District 3 unavoidably reduced the black total and voting age populations in surrounding congressional districts. (A list of present and new districts showing black total and voting age populations also is attached). In spite of this unavoidable reduction, however, new District 4 remains a black influence district with a total black population of 32.09

percent and a black voting age population of 30.66 percent. In addition, Virginia's new congressional reapportionment slightly enhances the minority influence in new District 5. New District 5 has a total black population of 24.71 percent and a black voting age population of 22.86 percent.

Virginia has no statistically significant concentrations of other racial, Hispanic, or language minority populations.

COMPONENTS OF CHAPTER 6 DISTRICT 3

This chart shows the relationship between present congressional Districts 1, 2, 3, and 4 and creation of a black majority district, designated District 3 in Chapter 6. It shows for each district (1) the part included in New District 3 and (2) adjustments to compensate the district for the population shifted to District 3.

A. Present District 1

1. Included in Chapter 6 District 3

	Total	Black
Charles City	6,282	3,969
Essex	8,689	3,270
James City (part)	7,632	1,529
King and Queen	6,289	2,633
King William	10,913	3,310
New Kent	10,445	2,151
Richmond County	7,273	2,194
Hampton (part)	63,378	38,822
Newport News (part)	82,334	43,101
TOTAL	203,235	100,979
Percent of District 3	36.13%	28.06%

2. Adjustments Required to District 1

Added to bring District 1 within population deviation:

	Total	Black
Hanover (part)	34,942	3,598
Spotsylvania (part)	35,525	3,481
Stafford	61,236	4,304
Fredericksburg	19,027	4,115
TOTAL	150,630	15,498

3. Statistical:	Present	Chapter 6
Total Population	615,085	562,480
Percent Deviation	+ 9.35%	0.00%
Total Black	30.34%	17.98%
VAP Black	28.69%	16.87%

B. Present District 2

1. Included in Chapter 6 District 3

	Total	Black
Norfolk (part)	81,867	61,904
Percent of District 3	14.55%	17.20%

2. Adjustments Required in District 2
No additional population required to offset loss of part of Norfolk

3. Statistical:	Present	Chapter 5
Total Population	654,298	362,490
Deviation	+16.32%	0.00%
Total Black	23.95%	16.64%
VAP Black	22.41%	15.51%

C. Present District 3

1. Included in Chapter 6 District 3

	Total	Black
Henrico (part)	54,329	30,902
Richmond City (part)	144,740	106.373
TOTAL	199.969	137,275
Percent of District 3	35.39%	38.14%

2. Adjustments Required in District 3

18,150 (5,205 black) Chesterfield added to District 4. The balance of present District 3 is in Chapter 6 District 7 as follows:

	Total	Black
Chesterfield (part)	182,974	19,162
Henrico (part)	163,552	12,925
Richmond City (part)	58,316	5,749
TOTAL	404,842	37,836

3. Statistical:
Not Applicable

D. Present District 4

1. Included in Chapter 6 District 3

	Total	Black
Prince George (part)	1,877	313
Surry	6,145	3,411
Hopewell (part)	3,652	3,078
Petersburg (part)	24,756	20,370
Portsmouth (part)	38,871	31,671
Suffolk (part)	3,002	896
TOTAL	78,303	59,739
Percent of District 3	13.92%	16.50%

2. Adjustments Required in District 4
Added to bring District 4 within population deviation

	Total	Black
Chesterfield (part)	18,150	5,203
Goochland	14,163	4,210
Louisa	20,325	5,233
Virginia Beach (part)	9,941	1,174
TOTAL	62,579	15,820

3. Statistical:	Present	Chapter 6
Total Population	578,193	562,469
Percent Deviation	+2.79%	0.00%
Total Black	38.91%	32.09%
VAP Black	36.95%	30.66%

BLACK PERCENT OF POPULATION
OLD AND NEW DISTRICTS
(1990 CENSUS)

Number	Present District		Chapter 6 District	
	Total	Voting Age	Total	Voting Age
1.	30.34	28.63	17.98	16.87
2.	23.95	22.41	16.64	15.51
3.	28.99	27.13	63.98	61.17
4.	38.81	36.95	32.09	30.66
5.	23.86	22.11	24.71	22.86
6.	11.18	10.36	11.49	10.62
7.	10.76	10.34	10.08	9.44
8.	11.89	11.36	13.36	12.47
9.	2.60	2.53	2.48	2.42
10.	7.17	6.78	5.77	5.57
11.	N.A.	N.A.	8.18	7.46

TABLE 1

Proportion of Total Population in Split Counties and Independent Cities by Congressional District for 1991 Plan (C0723750)

County/City	CD	Total	White	%	African-Amer.	%
Hanover	1	34,842	30,943	88.8	3,598	10.3
James City	1	27,227	21,884	80.4	4,931	18.1
Spotsylvania	1	35,725	31,375	88.3	3,481	9.8
Hampton	1	70,415	55,095	78.2	13,159	18.7
Newport News	1	87,711	70,722	80.6	13,976	15.9
Norfolk	2	179,362	129,920	72.4	40,108	22.4
Virginia Beach	2	383,128	309,412	80.8	53,497	14.0
Henrico	3	54,329	22,728	41.8	30,902	56.9
James City	3	7,632	5,920	77.6	1,529	20.0
Prince George	3	1,877	1,490	79.4	313	16.7
Hampton	3	63,378	23,054	36.4	38,822	61.3
Hopewell	3	3,652	513	14.1	3,078	84.3
Newport News	3	82,334	35,696	43.4	43,101	52.4
Norfolk	3	81,867	18,308	22.4	61,904	75.6
Petersburg	3	24,756	4,142	16.7	20,370	82.3
Portsmouth	3	38,871	6,909	17.8	31,671	81.5
Richmond City	3	144,740	36,377	25.1	106,373	73.5
Suffolk	3	3,002	2,036	67.8	896	29.9
Chesterfield	4	26,300	17,894	68.0	8,034	30.6
Prince George	4	25,517	16,778	65.8	7,659	30.0
Hopewell	4	19,449	16,174	83.2	2,832	14.6
Petersburg	4	13,630	6,052	44.4	7,318	53.7
Portsmouth	4	65,036	46,303	71.2	17,509	26.9
Suffolk	4	49,139	26,475	53.9	22,349	45.5
Virginia Beach	4	9,941	6,996	70.4	1,174	11.8
Albemarle	5	32,180	28,080	87.3	3,710	11.5
Bedford	5	33,589	30,265	90.1	3,187	9.5
Bedford	6	12,067	11,591	96.1	425	3.5
Roanoke	6	67,247	64,698	96.2	1,812	2.7
Rockingham	6	51,017	49,742	97.5	852	1.7
Albemarle	7	35,860	31,184	87.0	3,114	8.7
Chesterfield	7	182,974	159,173	87.0	19,162	10.5
Hanover	7	28,464	25,497	89.6	2,807	9.9
Henrico	7	163,552	145,725	89.1	12,925	7.9
Spotsylvania	7	21,878	18,845	86.1	2,697	12.3
Richmond City	7	58,316	51,651	88.6	5,749	9.9
Fairfax	8	270,762	211,350	78.1	32,558	12.0
Roanoke	9	12,085	11,822	97.8	209	1.7
Prince William	10	81,674	73,479	90.0	5,484	6.7
Rockingham	10	6,465	6,418	99.3	17	0.3
Fairfax	10	138,947	123,293	88.7	5,304	3.8
Prince William	11	134,012	106,230	79.3	19,594	14.6
Fairfax	11	408,875	330,756	80.9	25,463	6.2

Source: Commonwealth of Virginia, U.S. Department of Justice Preclearance Submission, December 20, 1991, District Population Breakdown by Locality, Plan C0723750.

PLAINTIFF'S EXHIBIT 5 3:95CV942

TABLE 2

Proportion of Total Population in Split Counties and Independent Cities by County or Independent City for 1991 Plan (C0723750)

County/City	CD	Total	White	%	African-Amer.	%
Albemarle	5	32,180	28,080	87.3	3,710	11.5
Albemarle	7	35,860	31,184	87.0	3,114	8.7
Bedford	5	33,589	30,265	90.1	3,187	9.5
Bedford	6	12,067	11,591	96.1	425	3.5
Chesterfield	4	26,300	17,894	68.0	8,034	30.6
Chesterfield	7	182,974	159,173	87.0	19,162	10.5
Fairfax	8	270,762	211,350	78.1	32,558	12.0
Fairfax	10	138,947	123,293	88.7	5,304	3.8
Fairfax	11	408,875	330,756	80.9	25,463	6.2
Hanover	1	34,842	30,943	88.8	3,598	10.3
Hanover	7	28,464	25,497	89.6	2,807	9.9
Henrico	3	54,329	22,728	41.8	30,902	56.9
Henrico	7	163,552	145,725	89.1	12,925	7.9
James City	1	27,227	21,884	80.4	4,931	18.1
James City	3	7,632	5,920	77.6	1,529	20.0
Prince George	3	1,877	1,490	79.4	313	16.7
Prince George	4	25,517	16,778	65.8	7,659	30.0
Prince William	10	81,674	73,479	90.0	5,484	6.7
Prince William	11	134,012	106,230	79.3	19,594	14.6
Roanoke	6	67,247	64,698	96.2	1,812	2.7
Roanoke	9	12,085	11,822	97.8	209	1.7
Rockingham	6	51,017	49,742	97.5	852	1.7
Rockingham	10	6,465	6,418	99.3	17	0.3
Spotsylvania	1	35,525	31,375	88.3	3,481	9.8
Spotsylvania	7	21,878	18,845	86.1	2,697	12.3
Hampton	1	70,415	55,095	78.2	13,159	18.7
Hampton	3	63,378	23,054	36.4	38,822	61.3
Hopewell	3	3,652	513	14.1	3,078	84.3
Hopewell	4	19,449	16,174	83.2	2,832	14.6
Newport News	1	87,711	70,722	80.6	13,976	15.9
Newport News	3	82,334	35,696	43.4	43,101	52.4
Norfolk	2	179,362	129,920	72.4	40,108	22.4
Norfolk	3	81,867	18,308	22.4	61,904	75.6
Petersburg	3	24,756	4,142	16.7	20,370	82.3
Petersburg	4	13,630	6,052	44.4	7,318	53.7
Portsmouth	3	38,871	6,909	17.8	31,671	81.5
Portsmouth	4	65,036	46,303	71.2	17,509	26.9
Richmond City	3	144,740	36,377	25.1	106,373	73.5
Richmond City	7	58,316	51,651	88.6	5,749	9.9
Suffolk	3	3,002	2,036	67.8	896	29.9
Suffolk	4	49,139	26,475	53.9	22,349	45.5
Virginia Beach	2	383,128	309,412	80.8	53,497	14.0
Virginia Beach	4	9,941	6,996	70.4	1,174	11.8

Source: Commonwealth of Virginia, U.S. Department of Justice Preclearance Submission, December 20, 1991, District Population Breakdown by Locality, Plan C0723750.

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TABLE 13

Estimated White Cross-Over Rates in Southeastern Virginia Congressional Districts of the 1980s in Statewide General Elections for 1985 and 1989 (% of Group Crossing-Over)

Year	CD	Candidate of Choice	Weighted Regression White %	Extreme Case White %
1985	1	Baliles	33.2	42.5
1985	1	Wilder (B)	28.3	40.9
1985	1	Terry	43.7	51.7
1989	1	Wilder (B)	28.2	36.5
1989	1	Beyer	36.1	42.4
1989	1	Terry	54.9	60.1
1985	2	Baliles	36.8	45.6
1985	2	Wilder (B)	32.4	42.8
1985	2	Terry	43.2	51.8
1989	2	Wilder (B)	34.4	44.5
1989	2	Beyer	43.3	49.7
1989	2	Terry	59.4	64.3
1985	3	Baliles	32.0	38.0
1985	3	Wilder (B)	23.1	31.2
1985	3	Terry	45.6	50.8
1989	3	Wilder (B)	28.4	33.6
1989	3	Beyer	41.8	45.1
1989	3	Terry	41.8	44.3
1985	4	Baliles	36.9	43.0
1985	4	Wilder (B)	27.2	34.9
1985	4	Terry	46.0	50.9
1989	4	Wilder (B)	23.1	30.6
1989	4	Beyer	35.9	41.0
1989	4	Terry	57.6	61.2

Note: The cross-over rate of white voters is estimated through the use of weighted bivariate ecological regression and extreme case (homogenous) analysis for each of the elections.

TABLE 14

Estimated White Cross-Over Rates in Southeastern Virginia Congressional Districts of 1993 in Statewide General Elections for 1985 and 1989 (% of Group Crossing-Over)

Year	CD	Candidate of Choice	Weighted Regression White %	Extreme Case White %
1985	1	Baliles	40.8	43.5
1985	1	Wilder (B)	34.9	37.3
1985	1	Terry	49.8	52.0
1989	1	Wilder (B)	33.8	36.3
1989	1	Beyer	42.1	43.5
1989	1	Terry	55.5	56.4
1985	2	Baliles	42.7	45.3
1985	2	Wilder (B)	39.1	42.5
1985	2	Terry	48.4	51.4
1989	2	Wilder (B)	40.5	44.2
1989	2	Beyer	47.2	49.5
1989	2	Terry	62.3	64.2
1985	3	Baliles	14.2	46.4
1985	3	Wilder (B)	2.0	40.9
1985	3	Terry	30.2	55.3
1989	3	Wilder (B)	19.1	40.1
1989	3	Beyer	33.5	46.9
1989	3	Terry	48.7	60.9
1985	4	Baliles	39.9	42.7
1985	4	Wilder (B)	31.5	34.7
1985	4	Terry	48.5	50.9
1989	4	Wilder (B)	26.0	30.5
1989	4	Beyer	37.7	40.9
1989	4	Terry	57.7	60.7
1985	7	Baliles	37.3	39.6
1985	7	Wilder (B)	30.0	32.7
1985	7	Terry	49.6	51.3
1989	7	Wilder (B)	32.1	35.0
1989	7	Beyer	43.6	45.3
1989	7	Terry	42.6	46.0

Note: The cross-over rate of white voters is estimated through the use of weighted bivariate ecological regression and extreme case (homogenous) analysis for each of the elections.